

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1621 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

DALSUKHRAI G GHELANI

Versus

BHIKHALAL HARIALL MASHRU

Appearance:

MR SURESH M SHAH for Petitioner
MR VIJAY H PATEL for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 08/09/2000

ORAL JUDGEMENT

1. This is lanlord's revision u/s. 29(2) of the Bombay Rent Act (for short "the Act").
2. One room and Osari was let out by the landlord

revisionist to the defendant respondent on monthly rent of Rs.4.50 ps. The landlord was residing at Nasik and doing business there. He came to Rajkot on 23.6.1981 whereafter he came to know that the tenant had demolished the entire Suit premises without his consent and was constructing new suit premises without written consent or permission from the landlord. Accordingly the Suit for eviction was filed u/s.13(1)(b) of the Rent Act.

3. The Suit was resisted by the defendant respondent denying the aforesaid allegation of the landlord. He pleaded that the suit premises was in dilapidated condition. on 21.5.1971 one wall of the suit premises had fallen down and on 7.5.1981 the roof of the suit premises bent down. The defendant informed the plaintiff - landlord about the condition of the suit premises through notice dated 8.5.1983 but the plaintiff did not get the suit premises repaired. Thereafter backside wall had also fallen down in rainy season. Consequently the respondent defendant constructed two walls and put tiles on the roof on the same position and he did not raise any permanent construction inasmuch as the size and design of the suit accommodation was not changed and the walls were constructed at the place of old walls which had fallen down.

4. The Trial Court, after considering the evidence adduced by the parties, found that the tenant respondent had raised new construction of a permanent nature in the suit premises and those constructions were not in the nature of minor repairs. Consequently the landlord's suit was decreed.

5. The tenant preferred an Appeal. The Appellate Court taking shelter behind explanation to Section 13(1)(b) found that the constructions raised by the tenant respondent were removable and were saved under this Explanation and could not be categorised as permanent structure without the landlord's consent. Consequently the decree of the trial Court was set aside and the Suit of the landlord for eviction was dismissed. It is, therefore, this revision.

6. The only short point for consideration in this Revision is the scope of Section 13(1)(b) and Explanation appended thereto.

7. Shri M.S.Shah, learned Counsel for the revisionist has contended that the lower Appellate Court has wrongly interpreted Explanation to u/s.13(1)(b) and has wrongly held that the constructions raised by the

tenant are saved under Explanation and cannot be termed as construction of permanent nature without written consent of the landlord.

8. Section 13(1)(b) of the Act provides that a landlord shall be entitled to recover possession of any premises if the Court is satisfied that save as otherwise provided in Section 23(A) the tenant has without the landlord's consent given in writing erected on the premises any permanent structure.

9. Explanation to this Section inter-alia provides that for the purposes of clause (b) no permanent structure shall be deemed to be erected on any premises merely by a reason of the construction of a partition wall, door or lattice work or the filling of kitchen-stand or such other alterations made in the premises as can be removed without serious damage to the premises.

10. In order to appreciate the provisions of Section 13(1)(b) read with Explanation appended thereto it has to be seen what is the nature of construction alleged or raised by the tenant respondent. In a Revision u/s. 29(2) of the Act the scope for reappraisal of evidence is limited and the evidence can be reappraised not with a view to record findings which were not recorded by the trial Court or the Appellate Court or to substitute a finding over the findings recorded by the two Courts below. However, reappraisal of evidence is permissible to assess whether the findings recorded by the lower Appellate Court are perverse and against the evidence on record. It is true that the Appellate Court has jurisdiction to consider the entire evidence and to come to a conclusion other than that recorded by the trial Court, but in doing so it has to give satisfactory reasons as to why the findings recorded by the trial Court are incorrect or how it is going to be ignored. The trial Court recorded the finding that the new construction of the suit premises is permanent structure in the suit premises and it is not only minor repairs. While reaching this conclusion the trial Court has considered oral evidence, photographs, etc. showing that the tenant was demolishing the old structure and also the panchnama Ex.28. Thus the findings recorded by the trial Court were based upon proper appreciation of evidence on record. Even according to the tenant initially one wall had fallen down and subsequently after a gap of few years the roof had bent down on 7.5.1981, while debris of the demolished wall was being removed the other wall had also fallen down as a result of which the roof was bent. The

landlord was intimated about this condition of the premises, but he did not care to get it repaired. It is the case of the tenant that he had demolished two walls and also the remaining two walls and had raised new walls of mud and clay and did not use bricks, cement, concrete, stone, etc. This theory set up by the tenant was not believed by the trial Court. Even Panchnama Ex.28 indicated that cement, concrete, etc. were used by the tenant and that the new walls were not kachcha walls made of mud and clay. Tiles were placed on the roof. The plaintiff stated in Para : 4 of his examination in chief that when he visited the demised premises he found that the tenant was digging the foundation also. Nothing was asked from him in cross examination challenging his version that the defendant was digging foundation of the premises as well. Suggestion given to the defendant during cross examination that he had dug the foundation as well was no doubt denied by him, but this denial has no meaning because in examination in chief he did not say that he had not dug foundation, nor the plaintiff was cross examined on the point that the defendant had dug the foundation also. What the tenant has stated is that he has not changed the size of tenanted accommodation meaning thereby that the size and design of the accommodation was not changed. However, it clearly emerges from the evidence on record that the foundation was dug, four walls were demolished as a consequence of which the roof must also have fallen down. Walls are erected and constructed by the tenant with the help of bricks, stones, cement and tiled roof was placed on the supporting wall. The question is whether such construction amounts to permanent structure within the meaning of Section 13(1)(b) of the act or not. What is permanent structure and what amounts to temporary repairs to some extent is illustrated in Explanation to Section 13(1)(b) which shows that no permanent structure shall be deemed to be erected on any premises merely by reason of construction of partition wall, door or lattice work or filling of kitchen-stand or such other alteration made in the premises as can be removed without serious damage to the premises. Thus, all the constructions which can be said to be temporary structure are not illustrated in this Explanation. Only four illustrations are given, namely, if partition wall is constructed it can be said to be no permanent structure, likewise construction of door or lattice work also does not amount to permanent structure. Similarly filling of kitchen stand also does not amount to permanent structure. However, it has been further provided that such other alteration made in the premises as can be removed without serious damage to the premises will also not amount to permanent structure.

Thus, the emphasis is that if the construction is such which can easily be removed without causing serious damage to the premises it will not amount to permanent structure. On the other hand if the structure is raised in such a way which cannot be removed without causing damage to the premises it will become permanent structure. If in this line the structure raised by the tenant is examined there should be no difficulty in concluding that it was a permanent structure. The structure raised by the tenant was raised right from the foundation after demolishing at least four walls and the roof. The old walls were no doubt kachcha but the new walls have been constructed with the help of cement, concret, lime and bricks, etc. It is not a case where in place of demolished two walls kachcha walls were raised by the tenant to make the accommodation habitable. If the test of removability is applied in the instant case to determine the nature of structure it can be said that if the structure raised by the tenant is demolished or removed then practically there will be open land and not the old construction. Consequently even the test of removability will indicate that even by demolishing the new structure raised by the tenant the whole identity of the old structure let out to the tenant has lost its existence. Consequently if the structure raised by the tenant is to be demolished the identity of the whole tenanted accommodation will be changed and the old accommodation has already been damaged. Consequently Explanation to Section 13(1)(b) cannot be interpreted in a way to give benefit to the tenant. In my opinion the Court below was in apparent error in construing the provisions of Explanation to Section 13(1)(b) and holding that the structures raised by the tenant do not amount to permanent structure. On the other hand on proper appreciation of Explanation to Section 13(1)(b) considering the nature of construction raised by the tenant it can safely be said that the structures raised by the tenant are in the nature of permanent structure. Admittedly it has not been raised with written permission of the landlord. In this way the findings recorded by the trial Court were correct. Appreciation of evidence made by this Court has been done only with a view to test the correctness of the findings of the two Courts below. If on reappraisal of evidence by this Court it is found that the findings recorded by the trial Court are correct then such reappraisal of evidence in revision is permissible.

11. In the result the Judgment and Decree of the Lower Appellate Court cannot be sustained.

12. The Revision, therefore, succeeds and is hereby allowed. The Judgment and Decree of the lower Appellate Court dated 19.4.1984 are set aside and that of the trial Court dated 29.3.1982 are restored. No order as to cost of this Revision.

sd/-

Date : September 08, 2000 (D. C. Srivastava, J.)

sas